

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

<b>BROOKE SIMMONS, Individually and as Independent Executrix of the Estate of ANDIE SIMMONS</b>	§ § § § § § § § § §	<b>CIVIL ACTION NO. 5:12-cv-528</b>
<b>VS.</b>		
<b>UNITED STATES OF AMERICA and PAUL RICHETER, D.O.</b>		

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **BROOKE SIMMONS**, Individually and as Independent Executrix of the Estate of **ANDIE SIMMONS**, hereinafter called "Plaintiff", complaining of **THE UNITED STATES OF AMERICA** and **PAUL RICHTER, D.O.** hereinafter called "Defendants", and for cause of action would show the Court as follows:

1. This Court has jurisdiction over this lawsuit under the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and 28 U.S.C. §§ 2671-2680. Venue is proper in this district because all or part of the cause of action accrued in this district and because the Plaintiff resides in the district.

2. Plaintiff is a citizen of the United States and a resident of Comal County, Texas. At the time of the occurrence in question that gives rise to this lawsuit, the Plaintiff was a statutory heir and/or wrongful death beneficiary of **ANDIE SIMMONS** and/or is the personal representative of the estate of

**ANDIE SIMMONS.** **BROOKE SIMMONS** is the surviving spouse of **ANDIE SIMMONS** and Personal Representative of his estate (no administration is necessary).

3. Defendant, **UNITED STATES OF AMERICA**, is the proper party Defendant in this cause in accordance with the Federal Tort Claims Act, by and through the Department of Health and Human Services. All acts and/or omissions complained of herein took place at the **EL CENTRO DEL BARRIO**, 6315 S. Zarzamora, San Antonio, Bexar County, Texas 78211, and more specifically, CentroMed County Line Clinic in New Braunfels, Texas. Defendant, **UNITED STATES OF AMERICA**, was and is now the owner and operator of **EL CENTRO DEL BARRIO** and the CentroMed County Line Clinic. The negligence complained of arose from the treatment of the Plaintiff by Dr. Deborah Melendez, an employee of **EL CENTRO DEL BARRIO** and the Defendant, while acting within the course and scope of such employment. **EL CENTRO DEL BARRIO** and the CentroMed County Line Clinic are a deemed community health center, and are established by the Federally Supported Health Centers Assistance Act of 1992 and the Federally Supported Health Centers Assistance Act of 1995. El Centro Del Barrio was originally deemed eligible for FTCA coverage effective on June 30, 1993, re-deemed effective on June 23, 1996, and was further deemed effective on January 1, 2010 through December 31, 2010.

4. Plaintiff timely filed her claims for damage, injury or death with the Department of Health and Human Services and the six-month statute has

expired and therefore, the administrative tort claim was denied by as referenced in correspondence dated November 18, 2011. A true and correct copy of this document is attached hereto as Exhibit "A" and is incorporated herein by reference.

5. Defendant **PAUL RICHTER, D.O.** is a physician who is licensed to practice in the State of Texas, and will be served by delivering a copy of the summons and the complaint by serving **PAUL RICHTER, D.O.** at his place of business, 280 North Business IH 35, Suite 300, New Braunfels, Texas 78130.

6. Defendant, **UNITED STATES OF AMERICA**, will be served by delivering a copy of the summons and the complaint by Registered or Certified Mail to JOHN F. PANISZCZYN, the Acting United States Attorney for the Western District of Texas, or to an Assistant United States Attorney or clerical employee at the office of the United States Attorney, to the attention of the Civil Process Clerk, Ms. Melissa Albright, at 601 NW Loop 410, Suite 600, San Antonio, Texas 78216. Defendant, **UNITED STATES OF AMERICA** should also be served by serving a copy of the summons and the complaint by Registered or Certified Mail to ERIC HOLDER, Attorney General of the United States, Department of Justice, 10th and Constitution N.W., Washington, D.C. 20530.

7. Defendant, **UNITED STATES OF AMERICA** by and through the Department of Health and Human Services, a Federal Agency of the Defendant, was and is now the owner and operator of El Centro Del Barrio and CentroMed

County Line Clinic in the State of Texas and the County of Bexar and Comal and was engaged in operating hospitals and health clinics in the State of Texas.

**FACTS**

8. Plaintiff **ANDIE SIMMONS** presented to CentroMed County Line Clinic as a new patient on November 9, 2009 under the care of Deborah Melendez, M.D. Due to his hypertension, Dr. Melendez increased his Lisinopril. On June 7, 2010, Plaintiff **ANDIE SIMMONS** presented to CentroMed County Line under the care of Deborah Melendez, M.D. for tightness in his chest when he works out and for shortness of breath. Hydrochlorothiazide was prescribed and blood work was performed.

9. On June 17, 2010, Plaintiff **ANDIE SIMMONS** presented to Christus Santa Rosa Hospital - New Braunfels and was seen in the emergency room by Defendant **PAUL RICHTER, D.O.** Plaintiff **ANDIE SIMMONS** was experiencing pain in his upper abdomen. A urinalysis was done and he was diagnosed with a urinary tract infection and GERD and was discharged. On June 18, 2010, Mr. Simmons apparently suffered an arrhythmia which ultimately proved to be fatal despite immediate and intense intervention by trained professionals. He was pronounced dead at 23:24 on June 18, 2010.

10. An autopsy was performed the following morning at the Travis County Medical Examiner's office by Chief Medical Examiner David Dolinak, MD. Dr. Dolinak concluded that Mr. Simmons died as the result of atherosclerotic and hypertensive cardiovascular disease. Specifically, Dr.

Dolinak's examination found "The proximal segment of the left anterior descending coronary artery is occluded by atherosclerotic plaque. The right coronary artery is 40% stenosed by atherosclerotic plaque. The left circumflex coronary is 30% stenosed by atherosclerotic plaque."

### **ALLEGATIONS**

11. **THE UNITED STATES OF AMERICA**, its agents, servants and employees were negligent in their treatment of **ANDIE SIMMONS**, including but not limited to the following:

- a. Failing to meet the standard of care by not adequately assessing and/or monitoring Mr. Simmons;
- b. Failing to properly intervene to prevent Mr. Simmons from the cardiovascular event; and
- c. Failing to adequately monitor the worsening condition of Mr. Simmons.

12. The foregoing acts or omissions constituted negligence and violated the standard of medical care to which Mr. Simmons was entitled. Such acts and failures were the proximate cause of **ANDIE SIMMONS'S** death.

13. Plaintiff believes and alleges that Defendant **PAUL RICHTER, D.O.**, acting by and through his agents, agents by estoppel, ostensible agents, nurses, servants, representatives, and/or employees, committed certain acts and/or omissions in the medical and treatment of the Plaintiff, **ANDIE SIMMONS**, which constituted negligence, and that such negligent acts and/or omissions include, but are not limited to, the following:

- a. Failing to properly, adequately and/or timely evaluate **ANDIE SIMMONS'** medical condition;
- b. Failing to administer proper and/or adequate medical/nursing care and treatment to **ANDIE SIMMONS**; and
- c. Failing to perform and order adequate and/or timely diagnostic testing on **ANDIE SIMMONS** to determine the nature and degree of his illness.

### **DAMAGES**

14. **BROOKE SIMMONS** brings this action for all of the Wrongful Death Beneficiaries. As a proximate cause of the occurrence made the basis of this lawsuit, Plaintiff has sustained substantial damages to which she is entitled and exemplary damages for the Wrongful Death of **ANDIE SIMMONS**.

15. As a result of the occurrence, Plaintiff **BROOKE SIMMONS** has sustained substantial damages to which she is entitled under the law more particularly as follows:

1. pecuniary loss;
2. loss of companionship and society; and
3. mental anguish.

16. As a result of the death of **ANDIE SIMMONS**, the children of **ANDIE SIMMONS**, **ADDISON LEE SIMMONS** and **ALLISON GRACE SIMMONS** have sustained substantial damages to which they are entitled under the law more particularly as follows:

1. pecuniary loss;
2. loss of companionship and society;

3. mental anguish; and

4. loss of inheritance.

17. Furthermore, as a direct result of the occasion in question, Plaintiff **BROOKE SIMMONS** on behalf of the estate of **ANDIE SIMMONS**, deceased, is entitled to money damages for the conscious pain, suffering, and mental anguish that **ANDIE SIMMONS** sustained as a result of the incident for his untimely death. Plaintiff on behalf of the estate of **ANDIE SIMMONS**, deceased, also bring this cause of action for funeral expenses which were incurred on behalf of the estate of **ANDIE SIMMONS**.

18. If Defendant, **THE UNITED STATES OF AMERICA**, were a private person, it would be liable to the Plaintiffs in accordance with the Laws of the State of Texas.

19. Accordingly, Plaintiff **BROOKE SIMMONS**, Individually and as Independent Executrix of the Estate of **ANDIE SIMMONS**, demand judgment against Defendants, **THE UNITED STATES OF AMERICA** and **PAUL RICHTER, D.O.**, together with the costs and interest of this action.

20. **WHEREFORE, PREMISES CONSIDERED**, Plaintiff **BROOKE SIMMONS**, Individually and as Independent Executrix of the Estate of **ANDIE SIMMONS** pray that the Defendants be cited to appear and answer herein, and prays for judgment against the Defendants as follows:

a. For damages together with costs and interest of this action;

- b. For costs of suit; and,
- c. For such other and further relief as may be deemed proper to which Plaintiff is entitled to under equity and law.

Respectfully submitted,

**JANICEK LAW FIRM, PC**

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